Supreme Court, U.S.
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No. 89-535

In the Supreme Court of the United States

OCTOBER TERM, 1989

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED SEPTEMBER 28, 1989
CERTIORARI GRANTED JANUARY 8, 1990

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

No. 86-0398

KAREN B. CARTER; RAGENE CARTER, BY HER NEXT FRIEND, KAREN B. CARTER; PAULA JONES; CORY P. JONES BY HIS NEXT FRIEND, PAULA JONES; DAVID L. JONES; ELIZABETH STROOP; MELISSA LAM BY HER NEXT FRIEND, ELIZABETH STROOP; BRET LAM BY HIS NEXT FRIEND, ELIZABETH STROOP; JAMIE STROOP BY HER NEXT FRIEND, ELIZABETH STROOP; GENEVA POWERS; CRYSTAL MCLANAHAN BY HER NEXT FRIEND, GENEVA POWERS; DOROTHY BROWN; ROBERT LEE TURNER BY HIS NEXT FRIEND, DOROTHY BROWN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED

v.

OTIS R. BOWEN, SECRETARY OF HEALTH AND HUMAN SERVICES AND LARRY D. JACKSON, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES

DOCKET ENTRIES

DATE	NR	PROCEEDINGS
1986		
June 19	1	Pltf's Motion for Leave to Proceed In Forma Pauperis, filed with affidavits

DATE	NR	PROCEEDINGS
June 23	2	ORDER PERMITTING PLTFS TO PROCEED IFP, that pltfs be permitted to file their Complaint and to prosecute action without payment of fees or court costs, ent. 6-23-86, RLW, filed. Copies mailed.
June 23	3	Pltf's Complaint, filed. No jury.
June 23	4	Pltf's Motion for TRO, filed
June 23	5	Pltf's Memo. in Support of Motion for TRO, filed with appendix
June 23	6	Pltf's Motion to Maintain Class Action, filed
June 23	7	Pltf's Memo. in Support of Motion for Class Certification, filed
June 23	8	Pltf's Notice of Motion for Cert. of Class & Motion for TRO on 6-23-86 at 4:00 p.m., filed
June 23	–	Summonses issued and deld to Marshal
June 23		IN OPEN COURT: Williams, J., Kull, OCR. Appearances: Parties by counsel. Matter came on for hearing on pltfs' motion for TRO. Counsel heard. TRO to issue; to be in effect for 10 days. Court required no bond be posted by pltfs. (:52)
June 23	9	Temporary Restraining Order conditionally certifying class for purpose of TRO; enjoining defts from reducing or terminating pltfs' AFDC benefits; enjoining defts from requiring assignment of child support to DSS

DATE	NR	PROCEEDINGS
		and from assuming income of independently supported children; directing state deft within 30 days to re-evaluate all AFDC applications filed on or after 6/1/86 & make appropriate adjustments; enjoining defts from taking any further action to implement regulations pending hearing scheduled on 7/3/86; enjoining federal deft from taking action against state for non-compliance; directing TRO to issue without payment of security by pltfs; ent'd, RLW, filed. Copies to counsel.
July 2	10	Pltfs' Motion for Extension of TRO and Brief in Support, filed,
July 2	11	ORDER that TRO entered on June 23, 1986 be extended pending outcome of this litigation or further order of Court. The provision In Re State Deft. being directed to review all voluntary closures of AFDC cases etc., is made a part of the extended TRO. ENT 7-2-86, RLW, and filed. Copies mailed.
July 15	–	Return on Summonses, Executed, and filed.
July 23	12	ORDER that Defts Bowen and Lukhard file Motions to Dismiss, or Motions for Summary Judgment no later than August 18, 1986. Pltfs to file responsive briefs and, if appro-

DATE	NR	PROCEEDINGS
		priate, Cross-Motions for Summary Judgment by Sept. 12, 1986. Reply briefs shall be filed by Sept. 22, 1986. Within 5 days thereafter, parties are to contact Court's chambers for date to argue. ENT 7-23-86, RLW, and filed. Copies mailed.
July 23	13	Scheduling Order, ent 7-23-86, RLW, and filed. Copies mailed.
July 28	14	Answer of Wm L. Lukhard, State Defendant, Filed.
Aug. 18	15	Federal Deft's Memorandum of Points and Authorities in Support of His Motion To Dismiss Or, Alternatively, For Summary Judgment, With Exhibits, Filed.
Aug. 18	16	Deft's Motion to dismiss Or, In the Alternative, Motion For Summary Judgment On Behalf of Deft. Bowen, Filed.
Aug. 18	17	Federal Deft's Memorandum In Opposition to Pltf's Motion For Class Certification, Filed.
Aug. 21	18	Memorandum in Support of State Deft's Motion for Summary Judgment, filed.
Aug. 21	19	State Deft's Motion for Summary Judgment, filed.
Sept 15	20	Pltfs' Cross-Motion for Summary Judgment, filed.

DATE	NR	PROCEEDINGS
Sept 15	21	Pltfs' Memorandum in Support of Cross-Motion for Summary Judgment, filed, with Attachments.
Sept 22	22	Federal Deft's Reply to Brief in Support of Pltfs' Cross-Motion for Summary Judgment, filed.
Sept 23	23	Pltfs' Reply to Federal Deft's Memorandum in Opposition to Pltfs' Motion for Class Certification, filed.
Nov. 17	24	ORDER that Counsel are DIRECTED that within twenty-four hours after the Court of Appeals for Fourth Circuit issues its opinion in these cases, they are to move this Court to reactivate this case and they must reschedule a hearing on motions for summary judgment. In the interim, Clerk is DIRECTED to put case on inactive status and to not receive any pleadings in case until counsel present an order requesting the case be reactivated. ENT 11-17-86, RLW, and filed. Copies mailed.
1987		
Sept. 8	25	Deft Bowen's Motion to Excuse noncompliance with Order of 11/17/86 and Brief in support filed.
Sept. 8	26	Deft Bowen's Motion to Reactivate case & Brief in support filed.
Sept. 14	27	Pltfs' Motion to Excuse Noncompliance w/Court Order Filed 11/17/86, & Brief in Support, filed.

DATE	NR	PROCEEDINGS
Sep. 14	28	Pltfs' Response to Deft Bowen's Motion to Reactivate This Case and Statement of Remaining Claims, and Pltfs' Motion for Leave to File Supplemental Brief Before Oral Argument on Cross Motions for Summary Judgment and Brief in Support, filed.
Sep. 28	29	Deft Lukhard's Motion to Excuse Noncompliance with Court Order Filed 11/17/86 and Brief in Support, filed.
Sep. 29	30	ORDER that Pltf & Deft Bowen are excused from non-compliance and shall follow briefing schedule as set out in this Order. ENT 9/29/87, RLW, filed. Cps. mailed.
Oct. 5	31	ORDER that Deft Lukhard is excused from non-compliance and shall follow briefing schedule as set out in this Order. ENT 10/5/87, RLW, filed. Cps. mailed.
Oct. 20	32	Pltfs' Supplemental Brief in Support of Cross-Motion for Summ. Judg., filed.
Nov. 6	33	Deft's Reply to Supplemental Brief in Support of Pltfs' Cross-Motion for Summary Judgment, filed.
Nov. 19	34	ORDER that J. Aliperti, Esq. is GRANTED an extension until 11/18/87 to file reply to Defts' brief. ENT 11/19/87, RLW, filed. Cps. mailed.

DATE	NR	PROCEEDINGS
Nov. 19	35	Deft Lukhard's Supplemental Reply to Pltf's Cross-Motion for Summary Judgment, filed.
Nov. 19	36	Deft Lukhard/Jackson's Motion for Order of Substitution of Deft, filed.
Nov. 23	–	SO ORDERED that Larry D. Jackson is substituted as Deft 2 in lieu of Wm. L. Lukhard. ENT 11/23/87, RLW, filed. Cps. mailed.
Nov. 30	37	Pltfs' Reply Brief in Support of Pltfs' Cross-Motion for Summary Judgment, filed.
Dec. 15	–	IN OPEN COURT: Williams, J., V. Halasz, OCR. Appearance: Parties by counsel. Matter came on for hearing on parties' cross motions for summary judgment. Counsel heard. Ruling given from the bench. Defts' motion for summary judgment granted as to issue of inclusion of Title II Soc Security benefits. Pltfs' motion for summary judgment granted as to issue of $50.00 disregard provision. Court to issue memorandum and final order. (:45)
Dec. 21	38	MEMORANDUM OPINION of Court. ENT 12/21/87, RLW, filed. Cps. mailed.
Dec. 21	39	FINAL ORDER that Pltfs' statutory & constitutional claims of children receiving child support pymts. & the claims of the non-custodial parents

DATE	NR	PROCEEDINGS
		who are paying child support are voluntarily DISMISSED. The portion of the Defts' summary judgment motion which addresses the inclusion of children receiving Title II Social Security benefits in the AFDC assistance unit is GRANTED. The portion of the Pltfs' summary judgment motion which challenges the inclusion on statutory and constitutional grounds is DENIED. The portion of the Defts' summary judgment motion which asked the Court to uphold the Secy.'s refusal to disregard the 1st $50 of Social Security benefits paid to AFDC families is DENIED, & that part of the Pltfs' summary judgment motion challenging the Sec'y.'s interpretation of 42 USC § 602(a)(8)(A)(vi) is GRANTED. The TRO imposed by the Court's orders dated 6/23/86 & 7/2/86 is VACATED. ENT 12/21/87, RLW, filed. Cps. mailed.
Dec. 31	40	Pltfs' Petition for an Award of Attys.' Fees & Costs, filed w/Affidavits.
Dec. 31	41	Pltfs' Memorandum in Support of Petition, filed.
1988		
Jan. 6	42	Deft HHS's Motion to Alter or Amend Judgment and Brief in Support, filed.

DATE	NR	PROCEEDINGS
Jan. 15	43	Deft HHS's Motion for Extension to Respond to Pltfs' Petition for Atty. Fees, filed
Jan. 19	44	ORDER that Deft HHS may respond to Pltfs' Petition for Atty. Fees when Court rules on Deft HHS' Motion to Alter Judgment. If motion denied, respond w/in 10 days. ENT 1/19/88, RLW, filed. Cps. mailed.
Jan. 19	45	State Deft's Reply to Pltfs' Petition for Atty. Fees, filed.
Jan. 26	46	Pltf's Reply Brief in Opposition to Deft HHS's Motion to Alter or Amend, filed.
Jan. 29	47	Deft HHS's Reply to Pltf's Brief in Opposition to Federal Deft's Motion to Alter or Amend Judgment, filed.
Feb. 9	48	Pltfs' Response to Defts' Reply Brief for Their Motion to Amend Judgment, filed.
Mar. 4	49	MEMORANDUM OPINION of the Court. ENT 3/4/88, RLW, filed. Cps. mailed.
Mar. 4	50	FINAL ORDER that Deft HHS's motion to alter or amend 12/21/87 judgment is DENIED. ENT 3/4/88, RLW, filed. Cps. mailed.
Mar. 18	51	Deft HHS's Response in Opposition to Pltfs' Petition for Attys' Fees & Costs, filed.

DATE	NR	PROCEEDINGS
Apr. 7	52	Pltfs Powers & McClanahan's Notice of Change of Counsel's Address (J.B. Aliperti, Esq.), filed.
Apr. 7	53	Pltfs Powers & McClanahan's Notice of Hearing 4/28/88 at 9:00 a.m., filed.
Apr. 25	54	Pltfs' Reply Brief in Support of Attorneys' Fees, filed w/Affidavit of J. Hanken.
Apr. 28	–	IN OPEN COURT: Williams, J., V. Halasz, OCR. Parties by counsel. Matter came on for hearing on Pltfs' Motion for Atty. Fees. Arguments had. Motion granted but attorney Fees will be awarded only against the State Deft. in the sum of $10,074.25 and this award will be stayed pending appeal. Order to enter.
Apr. 28	55	JUDGMENT ORDER that Pltfs are awarded attys.' fees of $10,618.00. JUDGMENT for $10,618.00 is ENTERED for Pltfs against only the State Deft in his official capacity. The fed. Deft is not liable to Pltfs for attys.' fees. Execution on this Judgment is STAYED pending appeal & final decision by USCA on fed. Deft's appeal. If State Deft appeals, execution on this Judgment shall remain stayed w/out State Deft having to post appeal bond. ENT 4/28/88, RLW, filed. Cps. mailed.
May 3	56	Deft HHS's Notice of Appeal, filed.

DATE	NR	PROCEEDINGS
May 17	57	Pltfs' Notice of Cross-Appeal, filed.
May 18	–	TPO pkgs. sent to counsel for Deft HHS & Pltfs.
May 18	–	Record of Appeal, Vols. I, II & III del'l to USCA.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2530

ELIZABETH STROOP; MELISSA LAM BY HER NEXT FRIEND, ELIZABETH STROOP; BRET LAM BY HIS NEXT FRIEND, ELIZABETH STROOP; JAMIE STROOP BY HER NEXT FRIEND, ELIZABETH STROOP; GENEVA POWERS; CRYSTAL MCLANAHAN BY HER NEXT FRIEND, GENEVA POWERS; DOROTHY BROWN; ROBERT LEE TURNER BY HIS NEXT FRIEND, DOROTHY BROWN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS-APPELLEES

AND

KAREN B. CARTER; RAGENE CARTER, BY HER NEXT FRIEND, KAREN B. CARTER; PAULA JONES; CORY P. JONES BY HIS NEXT FRIEND, PAULA JONES; DAVID L. JONES, PLAINTIFFS

v.

OTIS R. BOWEN, SECRETARY, HEALTH AND HUMAN SERVICES, DEFENDANT-APPELLANT

AND

LARRY D. JACKSON, COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES

CENTER FOR LAW AND SOCIAL POLICY, AMICUS CURIAE

DOCKET ENTRIES

DATE	PROCEEDINGS
5/3/88	Civil case docketed. (db) [88-2530]
5/4/88	Clerk order filed requiring joint brief per side. Copies to all counsel. [88-2530] (db) [88-2530]
5/4/88	Docketing notice issued. [88-2530] (db) [88-2530]
5/9/88	Disclosure statement filed by Appellee (n). [88-2530] (db)
5/11/88	Disclosure statement filed by Appellee (n). [88-2530] (db) [88-2530]
5/16/88	Disclosure statement filed by Crystal McClanahan, Geneva Powers (n). [88-2530] (db) [88-2530]
5/26/88	Docketing statement filed by Appellant in 88-2538 [917653-1] T/S needed: n; T/S already on file: [88-2538] (db) [88-2538]
5/31/88	Docketing statement filed by Appellant in 88-2530 [917789-1] T/S needed: n; T/S already on file: [88-2530] (db) [88-2530]
6/3/88	Clerk order filed consolidating case(s) 88-2538 with 88-2530 for briefing and oral argument. XAP Appellant: Sec. Bowen Copies to all counsel. [88-2530, 88-2538] (db) [88-2530 88-2538]
6/3/88	Record on appeal filed. (Pleadings: Vols. I-III T/S: Exhibits: Depositions: Other: SEALED Vol: [88-2530, 88-2538] (db) [88-2530 88-2538]
6/3/88	Docketing notice issued. [88-2538] (db) [88-2538]
6/6/88	Cross-appeal briefing order filed. A/P brief due: 07/18/88; Projected calendar: December 1988. [88-2530, 88-2538] (db) [88-2530 88-2538]
6/15/88	Disclosure statement filed by Appellant Karen B. Carter in 88-2538 (n). [88-2538] (db) [88-2538]

DATE	PROCEEDINGS
6/20/88	Disclosure statement filed by Larry D. Jackson in 88-2538 (n). [88-2538] (db) [88-2538]
7/19/88	Cross-brief joint appendix filed by Appellee in 88-2530, Appellant in 88-2538. Type of Service: cs Copies of brief: 12 # pages: 23 Copies of apx: 6 # pages: 88. Sufficient [Y/N]: y. [88-2530, 88-2538] (bm) [88-2530 88-2538]
8/16/88	Amicus curiae brief filed by Center for Law and Social Policy. Type of Service: HD Copies of brief: 12 # pages: 32. Sufficient [Y/N]: n. Needs motion for leave to file Amicus brief. [88-2530, 88-2538] (jc) [88-2530 88-2538]
8/17/88	Motion filed by CLASP to file amicus brief [1124277-1] [88-2530, 88-2538] (db) [88-2530 88-2538]
8/18/88	Cross-brief filed by Appellee Elizabeth Stroop in 88-2530, Appellant Elizabeth Stroop in 88-2538. Type of Service: pm Copies: 5 # pages: 44. Sufficient [Y/N]: n. only filed 5 copies of brief. [88-2530, 88-2538] (bm) [88-2530 88-2538]
8/19/88	OSC case referred to clerk for calendaring [88-2530, 88-2538] (jlp) [88-2530 88-2538]
8/19/88	Clerk order filed granting motion to file amicus brief [1124277-1] in 88-2530, 88-2538 Copies to all counsel. [88-2530, 88-2538] (db) [88-2530 88-2538]
9/14/88	Motion filed by Appellant Bowen, Sec in 88-2530 to extend time to file brief until 10/20/88 [1141785-1] [88-2530] (db) [88-2530]

DATE	PROCEEDINGS
9/15/88	Clerk order filed granting motion to extend time to file brief [1141785-1] until: 10/20/88 Copies to all counsel. [88-2530] (db) [88-2530]
10/19/88	Case calendared for oral argument. [88-2530, 88-2538] (ca) [88-2530 88-2538]
10/20/88	Reply and answering brief filed by Appellant Bowen, Sec in 88-2530, Appellee Bowen, Sec in 88-2538. Type of Service: cs Copies: 12 # pages: 35. Sufficient [Y/N]: y. [88-2530, 88-2538] (bm) [88-2530 88-2538]
11/8/88	Cross-reply brief filed by Appellee in 88-02530, Appellant in 88-02538. Type of Service: pm Copies of brief: 5 # pages: 12. Sufficient [Y/N]: y. [88-2530, 88-2538] (bm) [88-2530 88-2538]
12/8/88	Oral argument heard. Courtroom Deputy: dad. [88-2530, 88-2538] (dad) [88-2530 88-2538]
12/21/88	Motion filed by Bowen, Sec in 88-2530, Bowen, Sec in 88-2538 to file post-argument memo material(s) [1178009-1]. [88-2530, 88-2538] (db) [88-2530 88-2538]
12/27/88	Response [1178419-1] to motion to file certain material [1178009-1] in 88-2530 filed by Appellee in 88-2530. [88-2530, 88-2538] (db) [88-2530 88-2538]
1/3/89	Court order filed by FDM, RFC, JDB granting motion to file certain material [1178009-1] in 88-2530, granting motion to file certain material [1178009-1] in 88-2538 Copies to all counsel. [88-2530, 88-2538] (db) [88-2530 88-2538]

DATE	PROCEEDINGS
3/28/89	Published authored opinion filed. [88-2530, 88-2538] (db) [88-2530 88-2538]
3/28/89	Judgment order filed. Terminated on the Merits after . Oral Hearing; Affirmed; Written, Signed, Published. JDB, Authoring Judge, FDM, RFC, [88-2530, 88-2538] (db) [88-2530 88-2538]
4/5/89	Motion filed by Appellant Bowen, Sec in 88-2530, Appellee Bowen, Sec in 88-2538 to extend time to file petition for rehearing 05/11/89 [1212835-1] [88-2530, 88-2538] (db) [88-2530 88-2538]
4/6/89	Clerk order filed granting motion to extend time to file pet reh [1212835-1] in 88-2530, 88-2538 Copies to all counsel. [88-2530, 88-2538] (db) [88-2530 88-2538]
4/7/89	Bill of costs filed by Appellant Elizabeth Stroop in 88-2538. [88-2538, 88-2530] (rm) [88-2530 88-2538]
5/10/89	Petition filed by Appellant Bowen, Sec in 88-2530, Appellee Bowen, Sec in 88-2538 for rehearing. Number copies filed: 16 [1225820-1], for suggestion for rehearing in banc. Number of copies filed: 16 [1225820-2] [88-2530, 88-2538] (dad) [88-2530 88-2538]
5/15/89	Federal Reporter Citation: 870 F.2d 969. [88-2530, 88-2538] (st) [88-2530 88-2538]
5/31/89	Court order filed by FDM, RFC, JDB denying motion for rehearing [1225820-1] in 88-2530, denying motion for rehearing [1225820-1] in 88-2538, denying motion for suggestion for reh in banc [1225820-2] in 88-2538 Copies to

DATE	PROCEEDINGS
	all counsel. [88-2530, 88-2538] (dad) [88-2530 88-2538]
6/9/89	Mandate issued. [88-2530, 88-2538] (rm) [88-2530 88-2538]
10/10/89	Supreme Court notice received of filing of petition for certiorari on 09/28/89. Supreme Court No. 89-535. [88-2530, 88-2538] (rm) [88-2530 88-2538]
11/13/89	Supreme Court notice received of filing of petition for certiorari on 11/01/89. Supreme Court No. 89-5954 [88-2530, 88-2538]. (rm) [88-2530 88-2538]
1/10/90	Supreme Court order filed granting petition for certiorari. Supreme Court No. 89-535 [88-2530, 88-2538] (rm) [88-2530 88-2538]
1/12/90	Supreme Court order filed denying petition for certiorari on 01/08/90. Supreme Court No. 89-5954 [88-2530, 88-2538] (rm) [88-2530 88-2538]

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 86-0398-R

KAREN B. CARTER; RAGENE CARTER, BY HER NEXT FRIEND, KAREN B. CARTER; PAULA JONES; CORY P. JONES BY HIS NEXT FRIEND, PAULA JONES; DAVID L. JONES; ELIZABETH STROOP; MELISSA LAM BY HER NEXT FRIEND, ELIZABETH STROOP; BRET LAM BY HIS NEXT FRIEND, ELIZABETH STROOP; JAMIE STROOP BY HER NEXT FRIEND, ELIZABETH STROOP; GENEVA POWERS; CRYSTAL MCLANAHAN BY HER NEXT FRIEND GENEVA POWERS; DOROTHY BROWN; ROBERT LEE TURNER BY HIS NEXT FRIEND, DOROTHY BROWN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

OTIS R. BOWEN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AND WILLIAM L. LUKHARD, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS

[FILED June 23, 1986]

COMPLAINT

I.

PRELIMINARY STATEMENT

1. On July 1, 1986, the Virginia Department of Social Services (DSS), administered by Defendant Lukhard, plans to implement new federal provisions in Virginia's

Aid to Dependent Children Program (AFDC). Section 2640 of the Deficit Reduction Act of 1984 (Pub.L. 98-369) (codified at 42 U.S.C. § 602(a)(38). These provisions will dramatically and unlawfully reduce to sub-poverty levels the monthly incomes of hundreds of low income households in Virginia.

2. The program change will require children who are currently independently supported with child support payments or Social Security benefits to become members of the AFDC assistance unit and divert that child's income to support the entire family.

3. Plaintiffs are the children who are independently supported, the children who need AFDC for their income subsistence, their caretakers, and the non-custodial parents who pay child support to children who do not receive AFDC. They seek declaratory and injunctive relief to prevent this unlawful taking of income and challenge defendant's policy as violating the Fifth, Tenth, and Fourteenth Amendments to the United States Constitution, the Social Security Act, 42 U.S.C. § 401 *et seq.*, and the purpose and provisions of the AFDC program. 42 U.S.C. § 601.

II.

JURISDICTION

4. The court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1343(3). Plaintiffs' claims are authorized by 42 U.S.C. § 1983.

5. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202, and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by 26 U.S.C. § 7402(a) and Rule 65 of the Federal Rules of Civil Procedure.

III.

PLAINTIFFS

6. Plaintiff Karen B. Carter is an adult citizen of Henrico County, Virginia. She resides with her minor children, Planitiff Ragene Carter (age 12) and Shaniece Carter (age 10 months).

7. Plaintiff Paula Jones is an adult citizen of Roanoke, Virginia. She resides with her minor children, Plaintiff Cory Jones (age 5) and Eric Byrd (age 9).

8. Plaintiff David L. Jones is an adult citizen of Roanoke, Virginia. He is divorced from Plaintiff Paula Jones and sends her regular child support payments for the support of his son, Plaintiff Cory Jones.

9. Plaintiff Elizabeth Stroop is an adult citizen of Harrisonburg Virginia. She resides with her minor children, Plaintiff Melissa Lam (age 13), Plaintiff Bret Lam (age 10) and Plaintiff Jamie Stroop (age 3).

10. Plaintiff Geneva Powers is an adult citizen of Tazewell County Virginia. She resides with her minor children, Plaintiff Crystal McClanahan (age 9), Nancy Powers (age 9), Nancy Powers (age 16) and Loretta Powers (age 13).

11. Plaintiff Dorothy Brown is an adult citizen of Norfolk Virginia. She resides with her minor children, Plaintiff, Robert Turner (age 11) and Kervin Brown (age 6).

IV.

DEFENDANTS

12. Defendant Otis R. Bowen is the Secretary of the Department of Health and Human Services (hereinafter HHS) and is responsible for the adoption and implementa-

tion of regulations to administer the provisions of the AFDC program in a manner consistent with federal law.

13. Defendant William L. Lukhard is the Commissioner of the Virginia Department of Social Services (hereinafter DSS) and, as such, is responsible for the general administration and implementation of laws concerning the social welfare of the people of the Commonwealth of Virginia. Defendant Lukhard is designated the chief administrative officer of DSS and is charged with the ultimate control and administration of DSS.

V.

CLASS ACTION

14. Plaintiffs bring this action on their own behalf and on behalf of their minor children, both on and not on assistance, and pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), on behalf of all persons similarly situated. These persons have suffered or will suffer a termination, decrease, or refusal of AFDC or the loss of the full use and benefits of child support or Social Security income paid on behalf of the independently supported child in the family.

15. They seek to represent four classes of persons in Virginia asserting similar interests and consisting of:

A. All children in Virginia who now or in the future will receive Social Security or child support payments who do not need to apply for AFDC has been sought, who must be included in the AFDC assistance unit under the defendants' policies. Plaintiffs Ragene Carter, Cory Jones, Melissa Lam, Bret Lam, Crystal McClanahan, and Robert Turner represent this class.

B. All AFDC recipients or applicants in Virginia whose AFDC is, was, or will be reduced, terminated or denied due to the consideration of the income of the children described in Class A. Plaintiffs Karen B. Carter, Paula Jones, Elizabeth Stroop, Jamie Stroop, and Dorothy Brown represent this class.

C. All persons in Virginia who are or will be representative payees of Social Security benefits or the payee of child support payment for the children described in Class A. Plaintiffs Karen B. Carter, Paula Jones, Elizabeth Stroop, Geneva Powers and Dorothy Brown represent this class.

D. All non-custodial parents of the children described in Class A whose parental support is now or will be assigned to DSS or considered as income support for other persons in his child's household. Plaintiff David Jones represents this class.

16. The requirements of Federal Rules of Civil Procedure 23(a) are met as follows:

a. The class is so numerous that joinder of all members is impracticable. The state defendant has estimated that approximately 17,000 persons currently receiving AFDC could potentially be affected by the policy.

b. There are questions of law and fact common to the class.

c. The claims of the representative parties are typical of the respective classes.

d. The representative parties will fairly and adequately protect the interests of the class inasmuch as they have no interests which are antagonistic to the in-

terests of other class members and are represented by certain counsel experienced in this type of litigation.

17. The requirements of Rule 23(b)(2) are met in that the parties opposing the class have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VI.

FACTS

A. Statutory and Regulatory Framework

The AFDC Program

18. The Aid to Families with Dependent Children Program (AFDC) is authorized under Title IV of the Social Security Act, 42 U.S.C. §§ 601 *et seq.* Its purpose is to provide financial assistance to the families of needy children who are deprived of parental support or care by reason of the death, continued absence from the home, unemployment, or incapacity of a parent. 42 U.S.C. §§ 606(a), 607.

19. The AFDC program is administered in Virginia pursuant to a plan adopted by the state in accordance with specific requirements set forth in 42 U.S.C. § 602(a). Federal funds are provided to Virginia to pay for part of the cost of the financial assistance provided under the plan when it meets these requirements. 42 U.S.C. § 603.

20. Under the requirements of § 602(a)(7), the state agency, Virginia DSS, must, in determining the need of a dependent child,

> take into consideration any other income and resources of any child or relative claiming aid to families with dependent children. . . .

21. Section 602(a)(7) requires the counting of only such income as is "actually available" to meet the needs of the dependent child on AFDC, including any income which such child "has the legal ability" to make available for his/her support or maintenance. 45 C.F.R. § 233.20(a)(3)(ii)(D).

22. Section 651 *et seq.* of 42 U.S.C. establishes an organizational division within the state welfare agencies, the IV-D Child Support and Paternity Establishment Unit, specifically to obtain and enforce child support orders and thereby reduce the welfare rolls. The IV-D Unit must assist both AFDC and non-AFDC families in collection of child support.

23. Effective October 1, 1984, 42 U.S.C. § 602(a) was amended by § 2640(a) of the Deficit Reduction Act of 1984, Pub. L. 98-369, to add a further state plan requirement codified at 42 U.S.C. § 602(a)(38). This amendment requires that the state plan shall:

> (38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include:
>
> (A) any parent of such child and
> (B) any brother or sister of such child, if such brother or sister meets the conditions described in clauses (1) and (2) of section 406(a), if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding Section 204(j), in the case of benefits provided under Title II); . . . .

24. Defendant Bowen has promulgated an "interim final" regulation effective October 1, 1984 to implement 42 U.S.C. § 602(a)(38). 49 Fed. Reg. 35586, 35599 (September 10, 1984), codified at § 45 C.F.R. § 206.10(a)(1)(vii)(B). It requires that:

> (a) State plan requirements. * * *
>
> (1) * * *
>
> (vii) For AFDC only, in order for the family to be eligible, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:
>
> (A) . . .
>
> (B) Any blood-related or adoptive brother or sister.

25. Defendant Lukhard had issued state regulations to implement these federal changes, effective on June 1, 1986 for new applications and July 1, 1986 for all existing AFDC cases. 2:13 Virginia Register 1353–1354 (March 31, 1986). The regulation provides in pertinent parts:

> § 1.1 . . . "Assistance unit" means all parents and siblings, both natural and adoptive, of the child for whom assistance is requested. . . .
>
> "Otherwise eligible" means that the individual is not precluded from eligibility by some provision of Part IV-A of the Social Security Act and with respect to children, means they meet the requirements of § 406 (a)(1) and (2) of that Act.
>
> * * * * *

§ 2.1 In order for the family to be eligible for ADC, an application with respect to a dependent child must also include, if living in the same household and otherwise eligible for assistance:

1. Any natural or adoptive parent; and
2. Any blood related or adopted brother or sister.

* * * * *

26. Defendant Lukhard issued "ADC Transmittal #103" to further implement[] the above state regulation into the Virginia ADC Manual.

27. AFDC Statutory provisions, and federal and state regulations also provide for the consideration of the income of stepparents who reside with children on AFDC. 42 U.S.C. § 602(a)(31), 45 C.F.R. § 233.10(a)(3)(xiv), Virginia ADC Manual § 305.4F. These provisions permit the stepparent to retain an amount equal to the state-established "Standard of Need" and other income deductions, to meet his own needs, before the stepparents' income is assumed available to the children receiving AFDC.

B. FACTS RELATING TO PLAINTIFFS

The CARTER Family

28. Plaintiff Ragene Carter was born in October 1973. About three years later, in August 1976, her parents were divorced. The divorce decree awarded custody of Ragene to her mother, Karen B. Carter, and ordered her father to pay $25.00 a week towards her support. The support order was later modified, increasing the required support payments to $50.00 per week. Ragene's father has faithfully paid his support to Ragene through the Henrico County Court system.

29. The Ragene's child support payments are used to meet Ragene's living expenses, including tuition for the private school she has attended for the last three years.

30. Plaintiff Karen B. Carter had a second child, Shaniece, in July 1985. They receive $231 each month from the AFDC program for their support.

31. On June 17, 1986 Karen B. Carter was orally notified by her DSS caseworker, that, beginning July 1, 1986, Ragene would have to apply for AFDC and that Ragene's support rights would have to be assigned to Virginia. Ragene's $200 to $250 per month of child support would then be paid to DSS, and the family's AFDC check would increase by $60, to $291 per month. In addition, the family would receive $50 of any support paid for Ragene.

32. Karen B. Carter was advised by her caseworker, that, if she refused to apply for AFDC for Ragene, the $231 AFDC payment would be terminated.

33. Faced with the choice of losing $231 AFDC or $90 in total monthly income, Karen B. Carter involuntarily applied for AFDC for Ragene and assigned Ragene's support rights to Virginia. With a 20% loss in income, Karen B. Carter will not be able to provide her family with necessities.

The JONES Family

34. Plaintiffs Paula and David Jones were divorced in 1981. The Jones' divorce decree awarded custody of their son, Cory P. Jones to the custody of his mother.

35. After the divorce, Paula Jones received AFDC benefits for herself and Cory, and her other son Eric Byrd. By Administrative order determined by DSS, David Jones was required to pay $36.00 weekly for Cory's support.

36. David Jones paid child support to DSS while Cory received AFDC. In 1983, Paula Jones was advised by her DSS caseworker that Cory would receive more income support if he did not receive AFDC benefits, but received child support directly from his father. At that time, Cory was removed from the AFDC family unit.

37. Since 1983, David Jones has paid directly to his ex-wife an average of $133 monthly for Cory's support. In addition, Cory stays with his father every weekend, and David Jones spends about $40.00 every weekend on Cory's expenses and their joint activities.

38. Paula Jones and her child Eric, receive AFDC benefits [from] Virginia DSS for their support. They receive $231 per month.

39. In June 1986, Paula Jones was notified by her DSS caseworker that, beginning July 1, 1986, she must apply for AFDC benefits for Cory. She must also assign all of Cory's support payments and his rights to such support to the Commonwealth of Virginia and turn over any support received by her for Cory to DSS.

40. Paula and David Jones do not want Cory to receive AFDC. His financial needs are met by his father's child support payments. David Jones does not want the money he pays for Cory to be assigned to Virginia and used to support children who are not his.

41. If Paula Jones refuses to apply for AFDC for Cory, she understands that her AFDC for herself and Eric will be terminated. If she does apply for AFDC, her family will receive $291 in AFDC and $50 of any child support paid. Depending on whether child support continues to be paid, Paula Jones would lose 6% to 20% of her family's income if Cory receives AFDC, and she will be unable to afford necessities.

The STROOP Family

42. Elizabeth Stroop and her three children live in Harrisonberg Virginia. Melissa (age 13) and Bret (age 10) each receive $319.00 per month in Social Security depend[e]nts' benefits because their father is disabled.

43. The Social Security checks are made payable to Elizabeth Stroop as Representative Payee for Melissa and Bret.

44. As Representative Payee, Elizabeth Stroop takes care to use the money from Social Security to meet Melissa's and Bret's personal needs. She has to file a "Representative Payee Report" with Social Security once a year to verify that the Social Security payments were either spent or saved for Melissa and Bret.

45. Elizabeth Stroop's youngest child Jamie (age 3) is the daughter of her second husband. She and Jamie receive $231.00 each month from the AFDC program.

46. Mrs. Stroop has been told by her DSS caseworker that her AFDC will be stopped on July 1, 1986 because Melissa and Bret have to apply for AFDC, and their Social Security benefits will have to be counted. Her family's income will drop by 26% from $869 per month to $638.

47. If her AFDC check stops, Mrs. Stroop and Jamie will not have any income at all. She will have to use Melissa's and Bret's Social Security income for family expenses. This is not allowed by the Social Security Administration, and Mrs. Stroop fears criminal prosecution.

The POWERS Family

48. Geneva Powers and her three daughters live in Tazewell, Virginia. Her youngest, Crystal (age 9) receives Social Security benefits because her father is deceased.

Crystal's monthly Social Security check is $254 which is paid to Geneva Powers as Representative payee.

49. The family's other income consists of $336 SSI paid to Geneva Powers because she is disabled, and $207 AFDC paid to Nancy and Loretta. O[ccas]ionally, Mrs. Power's receives a $50 check from DSS when child support is paid by her ex-husband for Loretta and Nancy.

50. Geneva Powers has been orally informed by her DSS caseworker that Crystal must be part of the AFDC unit beginning July 1, 1986. When Crystal's Social Security is counted, the AFDC check will be reduced to $11.00. Her family's income will drop by 25% – from $797 to $601.

51. Geneva Powers is afraid that she will be put into jail if she uses Crystal's money for her other daughters' needs, but she does not know how else she can try to meet her family's expenses.

The BROWN Family

52. Dorothy Brown lives with her two sons, Robert Turner (age 11) and Kervin Brown (age 6). Because Robert's father is deceased, Robert receives a Social Security Survivor's check for $457 each month. This amount is based upon his father's work record.

53. As representative payee of Robert's check, Mrs. Brown makes certain that Robert's Social Security is used to meet his financial needs. Robert suffers from asthma and requires regular medical treatment and takes medication daily. Despite his treatment, he has required emergency hospital care several times. Since Robert has no health insurance, his Social Security check is used to meet these medical needs as well as his living expenses.

54. Mrs. Brown and Kervin receive $231 in AFDC benefits each month. They have received notice from DSS

that effective July 1, 1986, Robert must apply for AFDC, and, as a result of counting his income, the AFDC check will be terminated. Her family's income will drop by 34% – from $688 to $457.

55. Mrs. Brown will be unable to support her family on Robert's Social Security check. She is afraid that she could be prosecuted by the Social Security Administration for misusing Robert's money.

IRREPARABLE HARM

56. Each Plaintiff family *currently* lives on a monthly income which is less than the federal poverty guidelines. If defendants' policies are implemented, each family will have less income with which to live. Each family will be unable to afford basic necessities. Each independently supported child will be unable to make full use of his or her own income and will be forced onto the welfare rolls. The custodial parents will be required to violate their legal duties as trustees or representative payees for the child support or Social Security benefits received on behalf of their independently supported children. Non-custodial parents will have income which is intended to benefit their own children diverted to the Commonwealth of Virginia to support unrelated children.

57. Without injunctive relief, plaintiffs and those they represent will suffer irreparable injury.

58. There is no adequate remedy at law to prevent or later compensate plaintiffs for their injuries.

VII. CAUSES OF ACTION

A. Violations of Federal Statutes.

59. The interim final rule promulgated by the defendant Secretary and the regulations issued by the state defendant

are inconsistent with and violate 42 U.S.C. §§ 602(a)(38) and 656(a)(1) in that they mandate inclusion in the AFDC assistance unit and consideration of the income of all co-resident siblings and half-siblings who receive child support or OASDI benefits on the basis of an absent, deceased or disabled parent without regard to whether those children are in fact deprived of parental support as a result of their parents' absence, death or disability.

60. The interim final rule promulgated by the defendant Secretary and the regulations issued by the state defendant are inconsistent with and violate 42 U.S.C. §§ 401 *et seq.*, 42 U.S.C. §§ 602(a)(7), 602(a)(10) and 602(a)(38) in that they presume that the child support and OASDI paymens made for the benefit of siblings and half-siblings residing with AFDC children are income available for the support of those AFDC children without regard to whether that income is in fact legally and actually available to meet the needs of those AFDC children.

B. Violations of the United States Constitution

61. As interpreted by the defendants, the statutory provision and the implementing state and federal regulations violate the Fifth and Fourteenth Amendment Due Process Clauses in that they constitute a taking of property of the children who receive child support or OASDI benefits and a taking of property of the parent providing parental support through those payments without just compensation.

62. As interpreted by the defendants, the statutory provision and the implementing state and federal regulations violate the Fifth and Fourteenth Amendment Due Process Clauses in that they irrebuttably presume that children who receive child support or OASDI benefits through absent, deceased or disabled parents and reside with AFDC

siblings or half-siblings are dependent children and that their income is available for the support of their AFDC siblings or half-siblings without a pre-deprivation hearing to determine whether those children are deprived of parental support or whether any part of their income is actually available to support their AFDC siblings or half-siblings.

63. As interpreted by the defendants, the statutory provision and the implementing state and federal regulations requiring that the child support payments made on behalf of children who happen to reside with siblings or half-siblings receiving AFDC assistance must be deemed available and effectively assigned to the support of those AFDC siblings or half-siblings violate the Tenth Amendment to the United States Constitution in that they impermissibly contradict, circumvent, and otherwise interfere with state court assessments of child support needs and responsibilities.

64. As interpreted by the defendants, the statutory provision and the implementing state and federal regulations violate the Fifth and Fourteenth Amendment Equal Protection Clauses in that the stepparents who reside with children receiving AFDC, who, like siblings, have no legal obligation to support those children, is counted in a more favorable manner than the income of siblings.

65. The statutory provision and the implementing state and federal regulations violate the Fifth and Fourteenth Amendment Equal Protection Clauses in that the children who receive child support payments who are required to apply for AFDC receive a $50 disregarded payment from any support thereafter paid to DSS while children who receive OASDI benefits who are required to apply for AFDC do not receive a $50 disregarded payment.

Prayer for Relief

WHEREFORE, plaintiffs, on their own behalf, their children's behalf, and on behalf of all other persons similarly situated ask this Court to:

A. Assume jurisdiction of this action, and set this cause down promptly for a hearing;

B. Determine by order as soon as practicable, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, that this action may be maintained as a class action;

C. Enter a temporary restraining order, to be made a preliminary injunction and later to be made permanent, ordering that:

1. The defendants are enjoined from requiring that independently supported children with child support or OASDI income must be included in AFDC assistance units or have their income considered in the AFDC assistance units' eligibility and grant amount determinations.

2. The defendants are enjoined from presuming that the child support or OASDI income of independently supported children is available to meet the needs of the AFDC siblings or half-siblings with whom they reside.

D. Enter a declaratory judgment finding that:

1. The Secretary's interim final rule as codified at 45 C.F.R. § 206.10(a)(1)(vii)(B) and the state defendant's regulations, are inconsistent with 42 U.S.C. § 602(a)(7), (10), and (38) and 42 U.S.C. § 401 *et seq.*

2. The Secretary's interim final rule as codified at 45 C.F.R. § 206.10(a)(1)(vii)(B) and the state defendant's regulations violate plaintiffs' rights under the Fifth, Tenth and Fourteenth Amendments of the United States Constitution.

E. Grant to plaintiffs' attorneys reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

F. Grant plaintiffs the costs of this action, and such other and further relief as is just and proper.

Respectfully Submitted,

KAREN B. CARTER, ET AL.
—By Counsel—

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Roanoke, VA 24016

Counsel for Plaintiffs

By: JILL A. HANKEN

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 86-0398-R

KAREN B. CARTER; RAGENE CARTER, BY HER NEXT FRIEND, KAREN B. CARTER; PAULA JONES; CORY P. JONES BY HIS NEXT FRIEND, PAULA JONES; DAVID L. JONES; ELIZABETH STROOP; MELISSA LAM BY HER NEXT FRIEND, ELIZABETH STROOP; BRET LAM BY HIS NEXT FRIEND, ELIZABETH STROOP; JAMIE STROOP BY HER NEXT FRIEND, ELIZABETH STROOP; GENEVA POWERS; CRYSTAL MCLANAHAN BY HER NEXT FRIEND GENEVA POWERS; DOROTHY BROWN; ROBERT LEE TURNER BY HIS NEXT FRIEND, DOROTHY BROWN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

OTIS R. BOWEN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AND WILLIAM L. LUKHARD, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS

PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

Plaintiffs hereby move this Court, under the provisions of Rule 65(b), for a Temporary Restraining Order

1. certifying conditionally the four classes of Virginia residents represented by the named-plaintiffs as outlined in plaintiffs' complaint;

2. enjoining defendants from denying, reducing or terminating plaintiffs AFDC benefits on July 1, 1986 because

of the application of the assistance unit provisions contained in 45 CFR § 206.10(a)(1)(vii)(B) and Virginia ADC Transmittal #103.

3. enjoining defendants from requiring independently supported children who reside with children on AFDC to apply for AFDC or to assign or surrender their child support to DSS.

4. enjoining defendants from assuming that the income of the independently supported children is available to other family members who receive AFDC;

5. requiring the state defendant to reevaluate all AFDC applications filed on or after June 1, 1986 and adjust eligibility determinations and benefit levels without regard to the assistance unit regulations cited above.

6. enjoining defendants from taking any further action to implement the assistance unit regulations in Virginia pending further hearings and orders by this court;

7. allowing the Temporary Restraining Order to issue without the payment of security by plaintiffs on account of plaintiffs' indigency and because significant public issues are involved in this case;

In support of this Motion, the Plaintiffs state the following:

1. Plaintiffs and the class they represent will suffer irreparable injury if the Temporary Restraining Order is not granted;

2. The harm which the plaintiffs will suffer in the absence of a Temporary Restraining Order far outweighs any harm which the defendants will suffer if the requested injunction is granted;

3. There is a very great likelihood that Plaintiffs will prevail on the merits in this action;

4. It is in the public interest to grant the requested injunction.

In further support of this Motion, Plaintiffs submit the attached affidavits and the accompanying Memorandum.

Respectfully Submitted,

KAREN B. CARTER, ET AL.
—By Counsel—

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Counsel for Plaintiffs

By: JILL A. HANKEN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No:

KAREN B. CARTER, ET AL.

v.

OTIS BOWEN, ET AL.

I, ELIZABETH S. STROOP, being duly sworn, depose and say as follows:

1. I am a resident of the City of Harrisonburg, Virginia, living at 2531-C Mosby Court, Harrisonburg, Virginia.

2. My family consists of myself and my children: my daughter Melissa, who is age 13; my son Brett, who is age 10; and my daughter Jamie, who is age 3.

3. Each month, Jamie and I receive ADC benefits which total Two Hundred Thirty-one Dollars ($231), and up to Fifty Dollars ($50) of the support which my ex-husband, Jamie's father, pays to the State. Melissa and Brett receive a total of Six Hundred Thirty-eight Dollars ($638) in dependents' benefits from Social Security because their father, my first husband, is disabled.

4. I am the Representative Payee for Melissa's and Brett's Social Security income. Social Security has made it very clear to me that I must use this money only for Melissa's and Brett's benefit. I budget carefully and keep receipts to show that I am following this rule. I understand

that I can be fined or imprisoned if I break this rule. Likewise, the ADC benefit and the support is for Jamie's and my needs.

5. I use the Social Security money to pay the rent, because before receiving that money we did not have to pay rent. (I reside in a federally-subsidized housing project where my monthly rent varies according to my monthly income.) I also use the Social Security money to pay Melissa's and Brett's part of the phone bill, to pay for their clothes, medical needs, public transportation as we do not have a car, hair cuts, some food, school needs, etc. I try to divide the expense of the type of household items which are shared by the family such as soap or shampoo. I use Jamie and my ADC check to pay for the utilities, my part of the phone bill, clothes, some food, etc. (Attached is an average budget.)

6. I find that our income often doesn't meet our expenses. Our food stamps only cover about 16% of our grocery bill. I have been trying to save some money from the ADC check for some dental work I need badly as this is causing sinus infections, and I will lose teeth. (I have lost some teeth already because of the delay.) However, Melissa may need glasses which will have to come from the money I've set aside for my dental work. We need some new chairs as our chairs are bursting, but we haven't been able to afford any furniture. Jamie wants a tricycle so she can ride outside with the other children, but we can't afford one. I have learned that as the children get older, they need more things, and the things they need are more expensive, not just toys but things such as personal items, clothes, school supplies, school related expenses. I worry about our increasing expenses alot because I have talked with children Melissa's age who have already dropped out of school because they did not have the clothes they needed for school and they were uncomfortable and embarrassed

since, for example, the other teenagers called them names or made fun of them.

7. The Department of Social Services has told me that Jamie and my ADC check will stop in July. My worker there said this is because she has to count Melissa's and Brett's Social Security money as available to everyone including Jamie and myself. I didn't know whether to believe this or not at first. Now I am confused, upset, and afraid. Melissa and Brett are very frightened because they think they might have to leave, even though I have tried to assure them they can stay with me. I understand from Social Security that I cannot use the Social Security money for myself or Jamie because it is against the law, and I could be punished if I do. I don't want to be forced to send Melissa and Brett to their disabled father who is unable to take care of them and has not had anything to do with them for years. On the other hand, I don't know how I will meet the needs of my family and myself.

8. I have tried to make a budget without Jamie and my ADC money. I think Jamie's father is supposed to pay about Twenty-Five Dollars ($25) per week in child support to the State. I may be able to meet Jamie's needs with that money for now, as she is very small, but she will start school in a year or so, and I'm afraid I can't meet increased expenses. Melissa and Brett will have to do without more things such as some clothes, food, or school related activities. I don't know what I will do if anyone else needs glasses or dental work, or any other irregular or unexpected expenses occur. I have been unable to buy the clothing or shoes that I have needed for quite some time, and now there will also be no money for some food or personal items for myself.

9. I feel I have no other options for assistance as the children do not have grandparents who might be able to help us. I am limited in my ability to obtain any earned

income by my family responsibilities such as taking care of my three year old, and because of an injury I received on my job as a housekeeper about five years ago. A heavy window fell on my right hand and crushed it. (I am right handed.) I lost 75% of the grip in my hand. The doctor told me it will not get better, and it may get worse. I tried to keep working after my injury but had difficulty due to the heavy nature of housekeeping as a profession. I do not possess any other marketable skills as far as I know. I am also worried now, because I have used my left arm and hand more since the injury and I may have overdone it. I get swelling in that arm sometimes so that I can hardly lift my left arm to brush my hair.

/s/ Elizabeth S. Stroop
ELIZABETH S. STROOP

STATE OF VIRGINIA

COUNTY OF ROCKINGHAM, to-wit

I, Phyllis B. Tyson, a Notary Public in and for the County of Rockingham, Virginia, do certify that the foregoing Affidavit by Elizabeth S. Stroop was sworn to before me on this 16th day of June, 1986.

My Commission expires on 11th day of October, 1988.

/s/ Phyllis B. Tyson
Notary Public

STROOP FAMILY BUDGET

Average Income and Expenses

INCOME

Social Security Dependents' Benefits	$ 638.00
ADC Benefits	231.00
Support Paid to State	50.000
Food Stamps	86.00
Total	$1,005.00

EXPENSES

	Average Monthly Expenses	Melissa's & Brett's Expenses, Pro-Rata Share of Joint Exp.
Rent	$ 107.00	$107.00
Groceries	540.00	227.00
Electricity	70.00	35.00
Clothes (for Melissa and Brett)	80.00	80.00
Telephone	17.00	9.00
Transportation (cabs and buses)	60.00	30.00
Pharmacy (nonprescription medicine, vitamins, bandages, etc.)	30.00	20.00
Medical (Such as appointment with Doctor)	20.00	20.00
Personal/Household Items (such as haircuts, soap, shampoo, detergents, tissues, etc.)	50.00	25.00
Spending Money for Melissa and Brett (for birthday parties, skating, movies, toys for Brett, a pocketbook for Melissa, etc.)	50.00	50.00
School Trips (Brett & Melissa) and Meals Out (on the school trips with Jamie and I)	50.00	35.00
Total	$1,074.00	$638.00

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No:

KAREN B. CARTER, ET AL.

v.

OTIS BOWEN, ET AL.

AFFIDAVIT IN SUPPORT OF TEMPORARY
RESTRAINING ORDER

DAVID LEE JONES, the undersigned below, being duly sworn accordingly to law, deposes and says:

1. I am an adult citizen of the City of Roanoke, who resides at Route 8, 4749 Wood Road, Roanoke, Virginia 24014.

2. I am the father of Cory Paul Jones, age 5, and the former husband of Paula Jones.

3. Paula Jones and I were divorced in March, 1981. We separated in February, 1980. Paula Jones has had custody of Cory since his birth in July, 1980.

4. I have a son, Christopher Lee Jones, from my first marriage. Chris lives with me and I am fully responsible for his support.

5. Following our separation, Paula began to receive Aid to Dependent Children (ADC). In November, 1980, the Division of Child Support Enforcement (DCSE) issued an administrative order establishing my child support obligation at $24.47 per week. I agreed to a voluntary wage

assignment. The amount was increased to $36 per week in May, 1982.

6. In September, 1983, Paula's ADC caseworker suggested that Cory would receive more support if he were excluded from the grant. Cory was excluded from the assistance unit and I agreed voluntarily to pay Paula $155 per month as long as I was working full time. When my hours are cut back we agreed that I'll pay her $112 per month.

7. Since the separation, I have faithfully supported my son by paying child support either to the Division of Child Support Enforcement or directly to Paula Jones. In addition to the $112 to $155 paid monthly to Paula, I contribute to my child's support every weekend when he visits. I have purchased clothing, books, and toys for him and take him on outings. I spend approximately $40 per weekly visit. I also pay $8 per month on Cory's share of the group health insurance plan.

8. My children are very important to me. Paula and I keep each other informed on what is happening to Cory. Paula and I have tried to work out custody, visitation support issues in a calm, practical way. I come from a broken home and I do not want Cory to deal with some of the problems I faced.

9. Because Paula believes in cooperating with me in raising our son, as soon as she received the sibling deeming notice from the Department of Social Services (DSS) she contacted me. Currently, Paula and her son Eric Andrew Byrd receive ADC, but Cory is excluded because I am providing child support and health insurance. According to the notice, Cory must be added to the ADC assistance unit as of July 1, 1986. This means that Cory will not receive the money I am paying for his support. All of the money I pay except for $50 will go to the State of Virginia as reimbursement for ADC funds paid to support Paula, Cory and Eric.

10. I want to support my own child. I don't want my wages to be used by the state to support a child who is not mine. My son shouldn't be penalized because he has a poorer half-sibling. I don't want my son to receive welfare again. I have worked hard to make sure he and Christopher would stay off ADC and now he is being forced to receive it. I was never consulted about this nor have I received any formal notice of the change.

11. If my son is going to be forced to receive ADC, and my money will be used to finance the ADC program, I see no reason for me to keep paying child support. If Cory is forced into the ADC unit then DCSE can get another administrative order making me pay even more money to the state.

12. If this matter cannot be resolved, I will petition for custody so Cory can live with me. If this unjust rule is enforced, I see no other way to end this unfair treatment.

/s/ David Lee Jones
DAVID LEE JONES

STATE OF VIRGINIA *
*
CITY OF ROANOKE *

The foregoing instrument was acknowledged before me on June 16th, 1986.

/s/ Linda H. Casper
Notary Public

My commission expires: 10/27/89

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No:

KAREN B. CARTER, ET AL.

v.

OTIS BOWEN, ET AL.

AFFIDAVIT IN SUPPORT OF TEMPORARY RESTRAINING ORDER

PAULA JONES, the undersigned below being duly sworn according to law, deposes and says:

1. I am an adult citizen of the City of Roanoke who resides at 736 Murray Avenue, S.E., Roanoke, Virginia 24013.

2. I am the mother of Cory Paul Jones, age 5, and the former wife of David Lee Jones. I have another son, Eric Andrew Byrd, age 9.

3. We were divorced in March, 1981. I have had custody of Cory since his birth in July, 1980. I was pregnat with Cory when we separated.

4. I have been on Aid to Dependent Children (ADC) since 1980. I have been unable to work outside the home because I have had to care for my two children and my invalid mother who has diabetes and is almost blind.

5. Both Eric and Cory were on the ADC grant until September, 1983. At that time I followed my ADC caseworker's suggestion and removed Cory from the

grant. That way, Cory would receive more support. I now receive $231 a month from ADC and on the average of $133 each month in child support directly from David. David provides health insurance for Cory through a group plan through his employer. He also keeps toys and clothing at his home for Cory to use during his weekend visits.

6. I live with my mother who receives Social Security. We share household expenses. I have been very careful to keep my ADC money separate from Cory's money. I keep the money in different envelopes in my purse.

7. My average household expenses for Eric and myself are as follows:

Utilities and phone	$ 80
Transportation	20
Food	70
Clothing	40
Miscellaneous	21
	$231

Cory's average monthly expenses are as follows:

Utilities and phone	$ 40
Transportation	10
Food	35
Clothing	20
School (snacks)	20
Miscellaneous	8
	$133

My mother pays our rent of $150 per month.

8. Earlier this month I received a notice from the Department of Social Services (DDS) that Cory will have to be included in the ADC assistance unit beginning July 1, 1986. When this happens, my ADC check will only be increased by $60. Cory will not receive all the support that his father pays. He will only receive the first $50 paid each month. The rest will go to the State of Virginia.

9. I don't want Cory to suffer because I have another son who receives ADC. I think it's unfair for the state to take Cory's money away from him. I also think it's unfair for the state to force Cory to receive ADC when his father is providing support and helping me raise Cory.

10. I don't know how we are going to live on less income. I will not be able to afford school supplies and fees for the children. We only purchase necessities now. We do not own a car, and we don't smoke or drink.

11. Cory's father and I had been getting along very well until the ADC dispute came up. I am afraid this will create problems between us because David hates the idea of his child being on welfare. I don't want Cory to be subjected to conflicts between his parents. I am afraid David will file for custody and I'll lose Cory.

/s/ Paula Jones
PAULA JONES

STATE OF VIRGINIA *
*
CITY OF ROANOKE *

The foregoing instrument was acknowledged before me on June 17, 1986.

/s/ Clarence I. Mitchell
Notary Public

My commission expires: 12/11/87

AFFIDAVIT OF DOROTHY BROWN

I, Dorothy Brown, being duly sworn, states the following:

1. I am forty-nine years old and reside in Norfolk, Virginia, with my sons, Robert Lee Turner, age eleven, and Kervin Brown, age six;

2. I am the sole caretaker of said children and my total income to support the children consists of $712.00 per month;

3. I am the representative payee for my son, Robert Lee Turner, who receives $457.00 monthly Social Security Survivors benefits on his father's earnings record, that I receive $231.00 monthly Aid to Families with Depend[e]nt Children (ADC) for my son, Kervin Brown, and that I receive $24.00 in food stamps;

4. I was notified by letter dated June 4, 1986, from the Department of Social Services that my ADC check will be terminated effective July 1, 1986, because my son, Robert Lee Turner, must be included in the Assistance Unit. His income from Social Security for May 1986, must be counted and, therefore, my total income is too high to receive ADC. This proposed termination presents an extreme hardship and dilemma for me;

5. I cannot support myself and my children on a sole income of $457.00 monthly Social Security Survivors Benefits. Without my $231.00 ADC check, I must now provide for all necessities and expenses previously paid by ADC with my son's Social Security check. Not only does the $457.00 social security check not cover my necessities and expenses, but I was told by a claims representative of the Social Security Administration that I am subject to criminal prosecution for using these funds for anyone else other than my son, Robert. I must visit the Social Security office once a year and make a report, showing that I spent

the money for my son, Robert, and no one else. I was further told that I must use this money for the needs of Robert and not the overall benefit of the family;

6. Previously to the proposed action of termination of my ADC check, my total income was insufficient to cover all of my needs. I have to borrow money from friends at the end of each month. Without my ADC check, I do not know how I am going to survive and meet my needs;

7. My total monthly household expenses amount to about $718.00;

8. My rent is $173.00 per month and I have had, at least, three warrants in the last year for paying my rent late.

9. As representative payee for Robert's social security check of $457.00, I deduct $113.00 for Robert's share of the rent (25% of his income). The other monthly expenses paid for out of this money, include the following:

a. I must pay $60.00 monthly for Robert's medication which include a spray mist inhaler, theo-dur tablets, and allergy injections. He suffers with chronic asthma;

b. I do not own an automobile and I have to pay $30.00 monthly for public transportation and car fare to friends who transport me to take care of my affairs. Because my son, Robert, has chronic asthma, I must take him on weekly visits to the doctor to get allergy injections;

c. I incur excess utility costs because I use the air conditioner as a humidifier to help Robert's asthma condition. Therefore, I deduct $15.00 for Robert's share of excess utility costs.

d. I pay $25.00 monthly to the City of Norfolk for ambulance service rendered to my son, Robert. My balance owing is $300.00, which I have incurred over the last year;

e. I pay $25.00 monthly to Norfolk General Hospital for emergency treatment rendered to Robert in the last year. My balance is about $800.00. His condition is worse in the summer and I have had to take him to the emergency room everyday to receive oxygen and other treatment from May 1985 through August 1985;

f. I spend $50.00 monthly on Robert's clothes. He is a large child and his clothes are, therefore, expensive. He is growing and wears through his clothes very quickly;

g. Other monthly expenses for Robert include: $100.00 for food, $30.00 for school expenses, and $15.00 for toiletries and haircuts;

10. I have neglected my own medical needs. The health department has recommended that I obtain dental work and has recommended that I get eyeglasses. These items are not covered by my medicaid and I have had no money to fulfill these needs;

11. Out of my ADC monthly check of $231.00, I pay for the following expenses: $60.00—rent, $130.00—food, $30.00—clothing for myself and my son, Kervin, $30.00—transportation, $15.00—telephone bill; and

12. Should the proposed action to terminate my ADC assistance be upheld, I fear that I will not be able to continue providing for the medical needs of my child, Robert, who is without medical insurance, that I will eventually be evicted from public housing if I receive any further warrants, and that I may be criminally prosecuted for misusing social security funds. This money is the only income I have to survive.

/s/ Dorothy Brown
DOROTHY BROWN

STATE OF VIRGINIA
CITY OF NORFOLK, to-wit:

The affiant, Dorothy Brown, in the foregoing affidavit, having been duly sworn, states that the facts and allegations contained therein are true.

/s/ Gail P. Staton
Notary Public

My commission expires:
October 4, 1988

[SEAL]

AFFIDAVIT OF GENEVA POWERS

I, GENEVA POWERS, being first duly sworn, do depose and state as follows:

1. I am a citizen and resident of the United States residing at 1533 Iron Street, Richlands, Virginia 24641, in Tazewell County. I live in a trailer with my three daughters. Nancy, age 14 and Loretta, age 16 are my daughters by my ex-husband, Roy Powers. Crystal, age 9, is my daughter by Ralph McClanahan, deceased. Mr. Powers and I divorced in 1973.

2. I am currently receiving Aid to Dependent Children benefits (ADC) for Nancy and Loretta in the amount of $207.00 per month from the Tazewell County Department of Social Services. I am representative payee for Crystal's $254.00 per month Title II Social Security check which she draws from her deceased father's earnings. I also receive $336.00 per month in SSI benefits for my nervous condition. Once in a great while I will receive a $50.00 ADC disregard check when my ex-husband decides to make a payment to the Welfare. I feel he should be made to do more to support our kids; I am just barely making ends meet.

3. As best as I am able to come up with, my average monthly expenses for my family are as follows:

Rent	$100.00
Electric	$110.00
Food (in addition to Food Stamps)	$350.00
Clothing	$ 60.00
Medical	$ 10.00
School supplies	$ 30.00
Transportation	$ 30.00
Non-food groceries/supplies	$ 50.00
Eyeglass payment (self)	$ 10.00
Vacuum cleaner payment	$ 22.14
Furniture payment	$ 25.00

Exercise bike (for Crystal)	$ 6.00
Recreation	$ 50.00
TOTAL	$853.14

4. In order to be Crystal's representative payee, I had to promise Social Security that I would spend her check only for her. They told me I could make purchases that benefited other household members too, so long as Crystal also benefited. I am required to certify annually with Social Security that I am spending Crystal's check correctly. To the best of my knowledge, my average monthly expenses for Crystal are as follows:

Portion of rent	$ 25.00
Portion of electricity	$ 27.50
Portion of food	$100.00
Portion of clothing	$ 30.00
Portion of school supplies	$ 10.00
Portion of transportation	$ 7.50
Portion of household items	$ 12.50
Portion of vacuum payment	$ 5.50
Portion of furniture payment	$ 6.25
Exercise bicycle	$ 6.00
Portion of recreation	$ 16.00
Medical (not on Medicaid)	$ 10.00
TOTAL	$256.25

5. In April of this year I was told by my ADC worker, Betty Sue Pruett, that I would have to add Crystal to my ADC Assistance Unit. She said it was a new law, and that my ADC benefits would go down from $207.00 to $11.00 per month. She said that the Department would consider Crystal's check to be available to the rest of my household. I told her that as Crystal's representative payee I had to spend Crystal's check just for Crystal, but she said that was the new law and there was nothing she could do about it.

6. On June 10, 1986 I received an Advanced Notice of Proposed Action from the Tazewell County Department of Social Services officially informing me of the cut in my ADC. The Notice said that the cut would take effect on July 1, 1986.

7. If my ADC is cut, I just don't know what I will do. I don't have enough money to pay my bills as it is. I would have to use Crystal's money for Nancy and Loretta too; I couldn't support the two of them on just $11.00 a month plus my SSI check. But I am afraid that if I use Crystal's money for them, I could go to jail for Social Security fraud. I don't understand why the government is telling me to do two different things at once, or how they expect me to make ends meet if they cut my monthly income by $196.00. This situation has made my nerves much worse so that I cannot sleep at night. I won't have the money to pay for utilities, clothing, medicine, transportation, and other basic necessities of life for my family.

8. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 13, 1986.

/s/ Geneva Powers
GENEVA POWERS

Notarization omitted pursuant to 28 U.S.C. § 1746.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 86-0398-R

KAREN B. CARTER; RAGENE CARTER, BY HER NEXT FRIEND, KAREN B. CARTER; PAULA JONES; CORY P. JONES BY HIS NEXT FRIEND, PAULA JONES; DAVID L. JONES; ELIZABETH STROOP; MELISSA LAM BY HER NEXT FRIEND, ELIZABETH STROOP; BRET LAM BY HIS NEXT FRIEND, ELIZABETH STROOP; JAMIE STROOP BY HER NEXT FRIEND, ELIZABETH STROOP; GENEVA POWERS; CRYSTAL MCLANAHAN BY HER NEXT FRIEND GENEVA POWERS; DOROTHY BROWN; ROBERT LEE TURNER BY HIS NEXT FRIEND, DOROTHY BROWN, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

v.

OTIS R. BOWEN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES AND WILLIAM L. LUKHARD, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES, DEFENDANTS

[FILED June 23, 1986]

TEMPORARY RESTRAINING ORDER

THIS MATTER comes before the court on plaintiffs' motion for a Temporary Restraining Order and for Conditional Class Certification. The court has reviewed the material submitted by the parties and heard the arguments of counsel this day. Being fully advised, the court finds and rules as follows:

1. Plaintiffs will lose a significant portion of their subsistence income support and will thereby suffer irreparable injury if the Temporary Restraining Order is not granted;

2. The harm which the plaintiffs will suffer in the absence of a Temporary Restraining Order far outweighs any harm which the defendants will suffer if the requested injunction is granted;

3. There is a very great likelihood that Plaintiffs will prevail on the merits in this action;

4. It is in the public interest to grant the requested injunction.

IT IS NOW, THEREFORE, ORDERED AS FOLLOWS:

1. Four classes of Virginia residents represented by the named-plaintiffs as outlined in plaintiffs' complaint, are conditionally certified for the purpose of this Temporary Restraining Order;

2. Defendants are temporarily enjoined from reducing or terminating plaintiffs AFDC benefits on July 1, 1986 because of the application of the assistance unit provisions contained in 45 CFR § 206.10(a)(1)(vii)(B) and Virginia ADC Transmittal #103.

3. Defendants are temporarily enjoined from requiring independently supported children who reside with children on AFDC to apply for AFDC or to assign or surrender their child support to DSS.

4. Defendants are temporarily enjoined from assuming that the income of the independently supported children is available to other family members who receive AFDC;

5. The state defendant is directed to within 30 days reevaluate all AFDC applications filed on or after June 1, 1986 and adjust eligibility determinations and benefit levels for those applicants without regard to the assistance unit regulations cited above.

6. Defendants are temporarily enjoined from taking any further action to implement the assistance unit regulations in Virginia pending further hearing scheduled before this court on July 3, 1986, 11:00 A.M.

7. The federal defendant is enjoined from taking any action against Virginia DSS because of its compliance with the terms of this Order.

8. This Temporary Restraining Order shall issue without the payment of security by plaintiffs on account of plaintiffs' indigency and because significant public issues are involved in this case;

ENTERED this 23rd day of June, 1986.

/s/ Richard L. Williams
United States District Judge

I ask for this:

/s/ Jill A. Hanken
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

Civil Action No. 86-0398-R

KAREN B. CARTER, ET AL., PLAINTIFFS

vs.

OTIS R. BOWEN, ET AL., DEFENDANTS

[FILED July 2, 1986]

ORDER EXTENDING TEMPORARY RESTRAINING ORDER

Upon motion of plaintiffs, Karen B. Carter, *et al.*, for an extension of the Temporary Restraining Order entered in this cause on June 23, 1986, and with the consent of counsel for defendants Bowen and Lukhard, and deeming it just and proper to do so, it is ORDERED that the Temporary Restraining Order entered in this cause on June 23, 1986, be, and the same hereby is, extended pending the outcome of this litigation or further order of this Court. The Court finds it appropriate to extend the Temporary Restraining Order for the reasons set forth in open court on June 23, 1986, as well as those additional reasons advanced in plaintiffs' motion.

Deeming it just and proper to do so, it is ORDERED that the following provision is made a part of the extended temporary restraining order:

> 9. The state defendant is directed to review all voluntary closures of AFDC cases which may have occurred due to the enforcement of the regulations now enjoined. Any such case voluntarily closed by an

> individual shall be identified, the caretaker notified of the injunction in this case and given the opportunity to reopen the AFDC case retroactive to the date of voluntary closure. This action shall be completed no later than August 1, 1986.

Let the Clerk send a copy of this order to all counsel of record.

7/2/86 /s/ Richard L. Williams
DATE United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 86-0398-R

KAREN B. CARTER, ET AL., PLAINTIFFS

v.

OTIS R. BOWEN, ET AL., DEFENDANTS

[FILED Nov. 17, 1986]

ORDER

The hearing on the motions for summary judgment heretofore scheduled for November 24, 1986 is continued until such time as the Court of Appeals for the Fourth Circuit issues its decision in *Britt v. Bowen,* No. 86-3076, consolidated with *Massinga v. Bowen,* No. 86-3083. These cases are scheduled for argument before the Fourth Circuit in January, 1987 and contain essentially the same issues presented to this Court in this matter. Counsel are directed that, within twenty-four hours after the Court of Appeals for the Fourth Circuit issues its opinion in these cases, they are to move this Court to reactivate this case and they must reschedule a hearing on the motions for summary judgment with the Court's secretary. In the interim, the Clerk is directed to put the case on inactive status and to not receive any pleadings in the case until counsel present an order requesting the case be reactivated because the Fourth Circuit has issued its opinion.

Let the Clerk send a copy of this order to all counsel of record.

Nov. 17, 1986 /s/ Richard L. Williams
DATE United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Civil Action No. 86-0398-R

KAREN B. CARTER, ET AL., PLAINTIFFS

v.

OTIS R. BOWEN, ET AL., DEFENDANTS

[FILED Sept. 14, 1987]

PLAINTIFFS' RESPONSE TO DEFENDANT BOWEN'S MOTION TO REACTIVE THIS CASE AND STATEMENT OF REMAINING CLAIMS, AND PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF BEFORE ORAL ARGUMENT ON CROSS MOTIONS FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT THEREOF.

COME NOW Plaintiffs, by counsel, and, pursuant to this Court's Order filed November 17, 1986, and in response to Defendant Bowen's Motion to reactivate this case, say as follows:

1. For the reasons stated by Defendant Bowen, Plaintiffs agree that this case should now be reactivated.

2. The U.S. Supreme Court decision in *Bowen v. Gilliard,* 55 U.S.L.W. 5079 (June 25, 1987) has addressed and disposed of several issues raised by Plaintiffs in this case.

3. Specifically, the Supreme Court held with regard to children independently supported by child support benefits that the DEFRA Amendment at issue here does not violate Fifth Amendment due process and equal protection principles nor the Fifth Amendment's takings clause.

4. Therefore, pursuant to F.R.C.P. 23(e) and 41(a) Plaintiffs will seek an order to voluntarily dismiss the statutory and constitutional claims of the children independently supported by child support payments.

5. Other issues in this case raised on behalf of children receiving Social Security benefits and absent parents paying child support are not disposed of by *Bowen v. Gilliard.* Plaintiffs intend to pursue the following claims made in their cross motion for summary judgment:

a. The Defendants' regulations violate the Social Security Act because the involuntary diversion of OASDI payments to needy siblings is contrary to the Social Security Act's Anti-Alienation Provision.

b. The regulations violate the Social Security Act's provisions governing the fiduciary duty of representative payees.

c. Defendant's regulations violate the Social Security Act and the Constitutional guarantee of Equal Protection of the laws by failing to disregard the first Fifty Dollars ($50.00) of Social Security Benefits received by a dependent child.

d. The DEFRA Amendment exacts an unconstitutional taking of the property of the absent parent paying a child support obligation without just compensation or due process of law.

6. Because plaintiffs' brief on these issues was filed one year ago and there have been new developments since that time, plaintiffs request Leave of Court to file a supplemental brief before oral argument is heard.

WHEREFORE, for the reasons stated herein, it is respectfully requested that this matter be reactivated on the Court's docket, and that Plaintiffs be granted time to file a supplemental brief on all remaining claims.

Respectfully Submitted,

KAREN B. CARTER, ET AL.
—By Counsel—

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Virginia Poverty Law Center
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Holly Peters
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100 Plume Center West,
#412
Norfolk, Va. 23510

Counsel for Plaintiffs

By: JILL A. HANKEN

CERTIFICATE OF SERVICE

I, Jill A. Hanken, Counsel for Plaintiffs do hereby certify that true and exact copies of the foregoing Plaintiffs' Response to Defendant Bowen's Motion to Reactivate this Case and statement of Remaining Claims, and Plaintiffs' Motion for Leave to file Supplemental Brief Before Oral Argument on Cross-Motions for summary Judgment, and Brief in Support Thereof, were mailed this 14th day of September, 1987, to:

Robert W. Jaspen, Esq.
Assistant U.S. Attorney
10th and Main Streets
Richmond, Va. 23210
Counsel for Fedral Defendant

Thomas J. Czelusta, Esq.
Assistant Attorney General
101 N. 8th Street
Richmond, Va. 23219
Counsel for State[] Defendant

/s/ Jill A. Hanken
JILL A. HANKEN

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Supreme Court of the United States

No. 89-535

LOUIS W. SULLIVAN, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER

v.

ELIZABETH STROOP, ET AL.

ORDER ALLOWING CERTIORARI
Filed January 8, 1990

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted and the parties are directed to adhere to the following briefing schedule. The brief of the petitioner must be received by the Clerk on or before February 9, 1990. The brief of the respondents must be received by the Clerk on or before March 6, 1990, and a reply brief, if any, must be received by the Clerk on or before March 16, 1990.

January 8, 1990

☆ U.S. GOVERNMENT PRINTING OFFICE: 1990—262-203/30010